

**REMARKS**

Claims 1, 3, and 5-33 are pending in the application. Claims 2 and 4 were previously canceled without prejudice. Claims 1, 9, 22, 23, 28 and 30-32 have been amended to further clarify Applicants' invention. Claims 1, 9, 22, 23, 28 and 30 are the independent claims.

The following remarks, in conjunction with the above presented amendments, are believed to be fully responsive to the Final Office Action mailed on April 29, 2005.

Claims 1, 3, and 5-31 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,144,838 to Sheehan ("*Sheehan*"). Claims 32 and 33 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sheehan* in view of U.S. Patent No. 5,987,443 to Nichols et al. ("*Nichols*").

*Sheehan* relates to standardized test evaluation, and more specifically is directed towards a diagnostic system to solve different inferential problems by firstly determining the specific combinations of skills to be considered in the analysis, and secondly by inferring students' "unobservable skill mastery patterns from their observable item response patterns..." *Sheehan*, col. 5, lines 58-63. *Sheehan* utilizes a Tree-Based Approach (TBA) to treat these two tasks as distinct problems requiring distinct solutions. TBA is a tree-based regression procedure that determines the combinations of skills that constitute the target of both group- and student-level inferences. *Sheehan*, col. 5, lines 43-46.

Claim 1, as amended, is directed to a method of conducting an assessment of an evaluatee. The method includes, for example, presenting a plurality of queries regarding the evaluatee to an entity, receiving a response to each of the plurality of queries, and applying the responses to a plurality of rules so that each rule has one of a satisfied state and an unsatisfied state, where a portion of the plurality of rules are interdependent. The method further includes (i) generating individualized

feedback items based on the state of the plurality of rules, where each feedback item is associated with at least one of the plurality of rules having the satisfied state, and (ii) transmitting the feedback items to the evaluatee. In addition, the method further provides that the plurality of queries seek information as to the strengths and weaknesses of the evaluatee as to one or more identified performance areas, and that the individualized feedback items include at least one specific action that an evaluatee should take to correct a particular problem or accomplish a given performance goal. .

A noteworthy feature of the method of claim 1 is the generation of individualized feedback items and their transmission back to the evaluatee, where the individualized feedback items include at least one specific action that an evaluatee should take to correct a particular problem or accomplish a given performance goal.

The method of claim 1 can be used, for example, in managerial evaluations of an evaluatee. For example, the method allows an evaluating entity to provide useful feedback to the evaluatee that can help the evaluatee further improve his or her performance in certain identified performance areas which the queries are probative of. In contrast to conventional test evaluation methods such as *Sheehan*, the method of claim 1 does not take as input responses of a testee to standardized educational assessment questions and then report a proficiency score or level to a third party based on which responses were “correct.” The method recited in claim 1 operates on responses by an entity to questions about an evaluatee *and reports individualized feedback – including at least one specific action that the evaluatee should take to correct a particular problem or accomplish a given performance goal -- to the evaluatee himself or herself* .

Applicants respectfully submit that *Sheehan* does not teach or suggest all of the elements of the independent claims, as amended, for at least the following two reasons.

**A. *Sheehan* Does Not Teach the Claimed Application of Responses to A Plurality of Rules**

First, *Sheehan* does not apply responses to a plurality of rules so that each rule has one satisfied state and an unsatisfied state. In *Sheehan*,

[t]he Tree-Based estimation strategy involves first constructing a strong model of student proficiency and then testing whether individual students' observed item response vectors are consistent with that model. The student proficiency model is estimated in two steps. First, a tree-based regression analysis is used to model the complex nonlinear ways in which required skills interact with different item features to produce differences in item difficulty. Second, the resulting item difficulty model is translated into a student proficiency model by estimating the probability that students at specified score levels will respond correctly to items requiring specified combinations of skills. The skill combinations considered are those which were found to have the greatest impact on performance, as evidenced in the item difficulty model. The resulting student proficiency model is specified in terms of an  $r \times k$  matrix of mastery probabilities where  $r$  is the number of points on the tests' reported score scale and  $k$  is the number of skill combinations identified in the tree-based analysis.

*Sheehan*, col. 6, lines 20-38. Thus, the method of *Sheehan* is used to sort skill level difficulty, and the resulting model that is produced by the method is a matrix of scores scales and skill combinations. Therefore, for example, *Sheehan* does not teach or suggest the feature of applicants' claim 1 of "applying the responses to a plurality of rules so that each rule has one of a satisfied state and an unsatisfied state". Applicants respectfully submit that the resulting probability matrix indicated by *Sheehan*, or the elements therein, do not represent satisfied and unsatisfied states – they represent expected skill mastery probabilities for examinees at selected score levels.

**B. *Sheehan* Does Not Teach the Claimed Reporting of Feedback Containing Specific Advice**

Second, *Sheehan* does not teach reporting of feedback containing specific advice as to what actions an evaluatee or a group of evaluatees should take to correct a particular problem or accomplish a given performance goal, as is recited, for example, in independent claim 1. In *Sheehan*, as noted

above, the results of the analysis are simply a categorization of scores in various groups based upon the number of correct answers submitted and on correlations between them.

Accordingly, Applicants respectfully submit that claim 1 is clearly neither taught nor suggested by *Sheehan*. The remaining independent claims 9, 22, 23, 28 and 30 each recite a similar feature, and thus are also patentably distinguishable over *Sheehan*. The dependent claims are each respectively dependent upon one of independent claims 1, 9, 22, 23, 28 and 30, and are therefore also urged as patentable over *Sheehan* for similar reasons.

Claims 32 and 33 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sheehan* in view of *Nichols*. *Nichols* is directed to a goal based educational system. Applicants respectfully submit that nothing in *Nichols* can cure the above-identified deficiencies of *Sheehan* as a reference against the independent claims, especially claim 30, and thus urge that claims 32 and 33 (each dependent upon claim 30 and partaking of its novelty) are thus patentable over each of *Sheehan* and *Nichols* whether alone or in combination.

### **CONCLUSION**

In view of the remarks herein, Applicants believe that each ground for rejection made in the instant application has been successfully overcome or obviated, and that all pending claims are now in condition for allowance. Withdrawal of the Examiner's rejections, and allowance of the current application are respectfully requested.

The Examiner is invited to telephone the undersigned in order to resolve any issues that might arise and to promote the efficient examination of the current application.

No additional fee is believed necessary for entry of this Amendment. However, the Commissioner is hereby authorized to charge any additional fee to Deposit Account No. 50-0540.

Dated: June 29, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Aaron S. Haleva', is written over a horizontal line.

Aaron S. Haleva  
Reg. No. 44,733  
KRAMER LEVIN NAFTALIS & FRANKEL LLP  
1177 Ave. of the Americas  
New York, New York 10036  
Tel.: (212) 715-7773  
Fax.: (212) 715-8000